

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE MOHAMED ANWAR

WRIT PETITION NO.11554/1997

BETWEEN :

Basavanyappa  
s/o.Gutyappa  
Major,  
Agriculture,  
resident of Sanda Village,  
Taluk Shikaripur,  
District Shimoga,  
Represented by S.P.A.holder,  
Revenappa,  
s/o.Shivappa Talagunda,  
age 22 years,  
Occ : Student,  
Resident of Sanda Village,  
Taluk Shikaripur,  
Dist.Shimoga.

PETITIONER

(By Sri Mohan Shanthanagoudar, Adv.,)

AND ;

1. Deputy Commissioner,  
Shimoga District,  
Shimoga.
2. The Assistant Commissioner,  
Sagar Sub-Division,  
Sagar,  
Dist.Shimoga.
3. Guruswamy,  
s/o.Guruvaiah,  
Major,  
Agriculture,  
Kappanahalli village,  
Shikaripura Taluk,  
Shimoga District,

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4. Mruthunjayappa,  
s/o.Chendrappa Ramani,  
Major,  
Agriculture,  
resident of Sande Village,  
Shikaripura Taluk,  
Shimoga District.

RESPONDENTS

(By Sri Jayakumar S.Patil for R3  
G.P. for R1 & 2)

This writ petition filed praying to  
quash vide Annexure F dated 2.1.08 and  
Annexure D dated 9.10.91.

This petition is coming on for hearing  
this day, the court made the following :-


**ORDER**

Heard.

2.In the year 1949-50 petitioner was  
granted the land under Dharkhast measuring 3  
acres 25 guntas in Sy.No.40 situate at Sanda  
Village of Shikaripur Taluk, Shimoga District  
and the saguvali chit i.e., Grant Certificate  
dated 31.3.1949 produced at Annexure 'A', was  
issued to him by the competent revenue  
authority. Necessary mutation entries were  
also recorded in the mutation register at  
Sl.No.22/48-49 to this effect indicating that

the land was granted to him for permanent cultivation. Similar entries were carried over in the relevant R.T.C. record.

3.petitioner belonged to a member of scheduled caste. A condition was incorporated in the said Grant Certificate (Condition No.8) that the granted land shall not be alienated by him for 10 years. But the said land was sold by him to Respondent No.4 Mruthunjayappa on 14.5.1958 i.e., within the prohibited period of 10 years. R-4, inturn, sold the very land to R-3 on 31.1.1984 under a Registered Sale Deed.

 4.Subsequently, after the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of transfer of certain lands) Act 1979, Act ('the Act' for short) came into force petitioner made an application to Respondent No.2 Assistant Commissioner under Section 5 of the Act requesting to resume the land from R-3 and restore its possession to him since the land was purchased by R-3 on 14.5.1958 in breach of the said prohibition

clause. On that application an enquiry was initiated by R-2 in Case No.PTCL CR 10/83-84 and the impugned order Annexure 'D' dated 9.10.81 came to be passed by him rejecting petitioner's application on the ground that the land was purchase byhim in public auction and as such the provisions of the Act are not applicable to the transfer thereof on 14.5.58. In appeal by the petitioner, Respondent No.1 Deputy Commissioner also passed the impugned order Annexure 'F' dated 2.1.1997 dismissing the same and affirming R-2's order.

5.Learned Counsel for petitioner argued that there is no believable material available on record for the authorities below to held that the said land was purchased by the petitioner in public auction. On the other hand, it was argued by him, that there was ample believable material available from the revenue records itself substantiating the petitioner's case that the land was granted with the said non-alienation condition and he being the member of the scheduled caste, the

said alienation made in contravention of that condition is void, and, therefore, he was entitled to the restoration thereof.

6. Learned Government Advocate representing Respondents 1 and 2 submitted that for want of admissible material on record he is not in a position to argue in support of the impugned orders of the authorities below.

7. The contents of Annexure 'H' Saguvali Chit as also the said extracts of the relevant mutation entries and the R.T.C. do not furnish any convincing indication that the said land was brought to sale under public auction by the Government and that the same was purchased by the petitioner in the said auction. On the other hand, the said dependable documentary material amply bear out the submission of the petitioner that it was granted to him under Dharkhast and therefore it was the granted land within the meaning of the Act. In that view of the material on record and it being an undisputed fact that the said land was alienated within the

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prohibited period, there cannot be any valid ground to deny the relief to petitioner provided under Sec.5 readwith Sec. 4 of the Act. Therefore, the alienaion made in favour of R4 on 14.5.1958 was null and void. Consequently its further transfer to R3's on 31.1.1984 by R-4 is also null and void. Hence, the impugned orders of R1 and R2 are unsustainable in law.

For the reasons aforesaid, the impugned orders of both the authorities below at Annexures 'D' dated 9.10.91 in No.PTCL CR.10;83-84; and Annexure 'F' inNo.SC & ST 12/95-96 are quashed. Respondent No.2 Assistant Commissioner shall take necessary legal action to restore possession of the land in question to the petitioner-grantee within three months from the communication of this order.

Sd/-  
JUDGE

cp.